

567—63.6 (455B) Bypasses and upsets.

63.6(1) Prohibition. Bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited. The department may not assess a civil penalty against a permittee for a bypass if the permittee has complied with all of the following:

- a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c. The permittee submitted the information required in 63.6(2), 63.6(3), and 63.6(5).

63.6(2) Request for anticipated bypass. Except for bypasses that occur as a result of mechanical failure or acts beyond the control of the owner or operator of a waste disposal system (unanticipated bypasses), the owner or operator shall obtain written permission from the department prior to any discharge of sewage or wastes from a waste disposal system not authorized by a discharge permit. The director may approve an anticipated bypass after considering its adverse effects if the director determines that it will meet the conditions in 63.6(1).

- a. The request for a bypass shall be submitted to the appropriate regional field office of the department at least ten days prior to the expected date of the event.
- b. The request shall be submitted in writing and shall include all of the following:
 - (1) The reason for the bypass;
 - (2) The date and time the bypass will begin;
 - (3) The expected duration of the bypass;
 - (4) An estimate of the amount of untreated or partially treated sewage or wastewater that will be discharged;
 - (5) The location of the bypass;
 - (6) The name of any body of surface water that will be affected by the bypass; and
 - (7) Any actions the owner or operator proposes to take to mitigate the effects of the bypass upon the receiving stream or other surface water.

63.6(3) Notification of unanticipated bypass or upset and public notices. In the event that a bypass or upset occurs without prior notice having been provided pursuant to 63.6(2) or as a result of mechanical failure or acts beyond the control of the owner or operator, the owner or operator of the treatment facility or collection system shall notify the department by telephone as soon as possible but not later than 24 hours after the onset or discovery.

- a. Notification shall be made by contacting the appropriate field office.
- b. Notification shall include information on as many items listed in subparagraphs 63.6(3) “d”(1) through (6) as available information will allow.
- c. When the department has been notified of an unanticipated bypass, the department shall determine if a public notice is necessary. If the department determines that public notification is necessary, the owner or operator of the treatment facility or the collection system shall prepare a public notice.
- d. A written submission describing the bypass shall also be provided within five days of the time the permittee becomes aware of the bypass. The written submission shall contain the following:
 - (1) The reason for the bypass, including the amount and duration of any rainfall event that may have contributed to the bypass;
 - (2) The date and time of onset or discovery of the bypass;
 - (3) The duration of the bypass;

- (4) An estimate of the amount of untreated or partially treated sewage or wastewater that was discharged;
- (5) The location of the bypass; and
- (6) The name of any body of surface water that was affected by the bypass.

63.6(4) *Monitoring, disinfection, and cleanup.* The owner or operator of the treatment facility or collection system shall perform any additional monitoring, sampling, or analysis of the bypass or upset requested by the regional field office of the department and shall comply with the instructions of the department intended to minimize the effect of a bypass or upset on the receiving water of the state. The following requirements for disinfection and cleanup apply to all bypasses:

a. The department may require temporary disinfection depending on the volume and duration of the bypass, the classification of the stream affected by the bypass, and the time of year during which the bypass occurs; and

b. The department may require cleanup of any debris and waste materials deposited in the area affected by the bypass. In conjunction with the cleanup, the department may require lime application to the ground surface or disinfection of the area with chlorine solution.

63.6(5) *Reporting of subsequent findings and additional information requested by the department.* All subsequent findings and laboratory results concerning a bypass shall be submitted in writing to the appropriate regional field office of the department as soon as they become available. Any additional information requested by the department concerning the steps taken to minimize the effects of a bypass shall be submitted within 30 days of the request.

63.6(6) *Upset.* An upset is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

a. An upset constitutes an affirmative defense to the assessment of a civil penalty for noncompliance with technology-based effluent limitations if the requirements of paragraph “*b*” of this subrule are met.

b. A permittee that wishes to establish an affirmative defense of upset shall demonstrate, through properly signed operation logs or other relevant evidence, that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time of upset being properly operated;
- (3) The permittee submitted notice of upset in accordance with 63.6(3); and
- (4) The permittee completed any remedial measures required by the department, including monitoring, sampling, or analysis of the upset requested by the department and any instructions from the department calculated to minimize the effect of the upset on the receiving water of the state.

c. In any enforcement action proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.